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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,481	04/06/2005	Junji Hoshiba	MD3015-0031	5334

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EXAMINER	
PARSLEY, DAVID J	
ART UNIT	PAPER NUMBER
3643	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/530,481	HOSHIBA ET AL.	
	Examiner	Art Unit	
	DAVID J. PARSLEY	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *06 April 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 12-16-08 and this action is final.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 and are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,010,847 to Braden in view of U.S. Patent No. 3,529,575 to Schalk and further in view of U.S. Patent No. 5,427,058 to Chung.

Referring to claim 1, Braden discloses an artificial nipple for an experimental animal comprising, a nipple - at 46 or 72, made of a material and configured to be elastically deformable such that an interior volume of the nipple is changed when the nipple is sucked by an animal - see figures 4-7 and 12 and column 3 lines 22-38 and column 4 lines 3-20, a replaceable duct - at 18 or 70, located in the nipple - see figures 1-12, and a structure – at 54 or 92, that prevents liquid from accumulating in portions of the nipple – see figures 1-12, wherein the structure that

prevents liquid from accumulating includes at least one of a separate elastic member and an elastic member formed integrally with an outer wall of the nipple – see figures 1-12, column 3 lines 22-38 and column 4 lines 3-20. Braden does not disclose liquid accumulates only in the nipple tip and the duct. Schalk does disclose the liquid accumulates only in the nipple tip – at the front of 19 and the duct – at 18 – see figure 6. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Braden and add the liquid accumulating in the nipple tip and the duct of Schalk, so as to allow for the flow of liquid in the device to be controlled. Braden as modified by Schalk does not disclose the duct is located entirely within the nipple, the duct including an outlet end located within the nipple to define the nipple tip portion between the outlet end of the duct and the nipple. Chung does disclose the duct – at 20, is located entirely within the nipple - at 10,30, the duct including an outlet end located within the nipple to define the nipple tip portion – at the portion of 30 before item 20, between the outlet end of the duct and the nipple – see figure 6. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Braden as modified by Schalk and add the duct and nipple of Chung, so as to allow for liquid to be accurately and quickly dispensed only when desired by an animal using the device.

Referring to claims 3, 6 and 12, Braden as modified by Schalk and Chung further discloses – at 41, provided in a joint part with a feeding bottle – at 10,18,26, – see figures 3 and 6 of Schalk. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Braden as modified by Schalk and Chung and add the check valve of Schalk, so as to allow for the flow of liquid in the device to be controlled.

Referring to claim 4, Braden discloses an artificial nipple for an experimental animal comprising, a feeding bottle – at 14, a nipple - at 46 or 72 separate from and connectable to the feeding bottle – see figures 1-12, made of a material and configured to be elastically deformable such that an interior volume of the nipple is changed when the nipple is sucked by an animal - see figures 4-7 and 12 and column 3 lines 22-38 and column 4 lines 3-20, a replaceable duct - at 18 or 70, located in the nipple - see figures 1-12, and a structure – at 54 or 92, that prevents liquid from accumulating in portions of the nipple – see figures 1-12, wherein the structure that prevents liquid from accumulating includes at least one of a separate elastic member and an elastic member formed integrally with an outer wall of the nipple – see figures 1-12, column 3 lines 22-38 and column 4 lines 3-20, a replaceable duct - at 18, in the nipple - see figures 10-12. Braden does not disclose liquid accumulates only in the nipple tip and the duct. Schalk does disclose the liquid accumulates only in the nipple tip – at the front of 19 and the duct – at 18 – see figure 6. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Braden and add the liquid accumulating in the nipple tip and the duct of Schalk, so as to allow for the flow of liquid in the device to be controlled. Braden as modified by Schalk does not disclose the duct is located entirely within the nipple, the duct including an outlet end located within the nipple to define the nipple tip portion between the outlet end of the duct and the nipple. Chung does disclose the duct – at 20, is located entirely within the nipple - at 10,30, the duct including an outlet end located within the nipple to define the nipple tip portion – at the portion of 30 before item 20, between the outlet end of the duct and the nipple – see figure 6. Therefore it would have been obvious to one of ordinary skill in the art to take the device of

Braden as modified by Schalk and add the duct and nipple of Chung, so as to allow for liquid to be accurately and quickly dispensed only when desired by an animal using the device.

Referring to claim 10, Braden as modified by Schalk and Chung further discloses the feeding bottle comprising therein a replaceable tube – at 14 – see figures 1-2 of Braden.

Referring to claims 7, 15 and 17, Braden as modified by Schalk and Chung further discloses a mechanism by which liquid stops flowing when an experimental animal drinks a predetermined amount or a certain amount of the liquid and thereby the internal pressure of the feeding bottle becomes negative – see 34 in figures 3 and 6 of Schalk. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Braden as modified by Schalk and Chung and add the mechanism for stopping flow of liquid of Schalk, so as to allow for the flow of liquid in the device to be controlled.

Referring to claim 8, Braden as modified by Schalk and Chung further discloses a mechanism by which the experimental animal is allowed to voluntarily drink the liquid again upon application of a pressure from outside the feeding bottle after the liquid stops flowing when the experimental animal drinks the predetermined amount or the certain amount of the liquid and thereby the internal pressure of the feeding bottle becomes negative – see at 10,34 in figures 3 and 6 of Schalk. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Braden as modified by Schalk and Chung and add the mechanism for stopping liquid flow of Schalk, so as to allow for the flow of liquid in the device to be controlled.

Referring to claims 5 and 11, Braden as modified by Schalk and Chung further discloses the tube is marked with calibrations for measurement and/or a movable mark – see at 16 in figure 2 of Braden.

Referring to claims 9 and 20, Braden as modified by Schalk and Chung further discloses the nipple is attached to a feeding bottle – at 14, including a replaceable tube – at 14,18, – see figures 1-2 of Braden and calibrations for measurement and/or a movable mark – see at 16 in figure 2 of Braden.

Referring to claims 13-14, Braden as modified by Schalk and Chung further discloses a check valve – at 41, provided in a joint part with a feeding bottle – at 10,18,26, – see figures 3 and 6 of Schalk. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Braden as modified by Schalk and Chung and add the check valve of Schalk, so as to allow for the flow of liquid in the device to be controlled.

Referring to claims 16 and 18, Braden as modified by Schalk and Chung further discloses a mechanism by which liquid stops flowing when an experimental animal drinks a predetermined amount or a certain amount of the liquid and thereby the internal pressure of the feeding bottle becomes negative – see 34 in figures 3 and 6 of Schalk. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Braden as modified by Schalk and Chung and add the mechanism for stopping flow of liquid of Schalk, so as to allow for the flow of liquid in the device to be controlled.

Referring to claim 19, Braden as modified by Schalk and Chung further discloses a mechanism by which the experimental animal is allowed to voluntarily drink the liquid again upon application of a pressure from outside the feeding bottle after the liquid stops flowing when the experimental animal drinks the predetermined amount or the certain amount of the liquid and thereby the internal pressure of the feeding bottle becomes negative – see at 10,34 in figures 3 and 6 of Schalk. Therefore it would have been obvious to one of ordinary skill in the art to take

the device of Braden as modified by Schalk and Chung and add the mechanism for stopping liquid flow of Schalk, so as to allow for the flow of liquid in the device to be controlled.

Response to Arguments

3. Regarding claim 1, applicant argues that combining nipple structure of the Schalk reference US 3529575 and the Chung reference US 5427058 to the Braden reference US 5010847 would render the Braden reference inoperable in that the Braden reference is for use with dry animal feed and not liquid. This argument is not persuasive in that the device of Braden could be used with liquid in that it has a container that could hold the liquid and a nipple that could be used by the animal to extract liquid from the container and therefore modifying the nipple of Braden to have structure similar to Schalk and Chung is not deemed to render the device of Braden inoperable. Further, applicant argues that items 46 or 72 of Braden can not be considered a nipple and items 18 or 70 can not be considered a replaceable duct and that items 54 or 92 can not be considered structure that prevents liquid from accumulating in portions of the nipple. As seen in figures 4-12 of Braden items 46 and 72 are clearly the portion of an animal feed device that is considered the nipple in that these items are where the animal removes the feed from the device. Further, as seen in figures 1-3 and 10-12 of Braden items 18 and 70 can be considered ducts in that they are each hollow tubular devices allowing passage of material and these items can be replaced with another of the same items and be attached to the same nipple as seen via the removable connections of the ducts and nipples as seen in figures 1-12 of Braden. Further, as seen in figures 7 and 12 of Braden, items 54 and 92 block the open cavity in the

nipples and therefore would restrict liquid from moving beyond items 54 and 92 to reach the end of the nipple most distal from the ducts as seen in figures 1-12 of Braden. Further, item 18 of Schalk can be considered a duct for the same reasons that items 18 and 70 can be considered a duct as seen in Braden. Further, liquid can accumulate only in the duct - at 18 and a nipple tip - being the forward tip of 18 and/or 19 where liquid accumulates inside item 18 which is inside item 19 and therefore the liquid can be considered as accumulating in both 18 and 19 of Schalk as seen in figures 1,3 and 6. Further, the device of Chung can be considered a nipple in that it is an elongated tube used to dispense animal feed just as the nipple structure of Braden and Schalk. Item - 20 is a duct as seen in figures 4-6 and is disposed entirely in the nipple - at 10,30 and is replaceable in the nipple via the threaded connection between items 20 and 30. Therefore it is deemed that the combination of the Braden, Schalk and Chung references discloses each of the claimed limitations and that the combination of these references is proper given the motivation to combine these references stated above in paragraph 2 of this office action.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. PARSLEY whose telephone number is (571)272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David J Parsley/
Primary Examiner, Art Unit 3643